

# August 16, 2005 City Council Meeting Background Memorandum

Department of Planning & Neighborhood Services



## **Proposed Consultant Contract with Dyett & Bhatia to Prepare Transit Area Specific Plan Phase II**

### **Background:**

At the July 5, 2005 Council meeting the Council discussed a proposed consultant contract with Dyett & Bhatia to complete Phase II of the Transit Area Specific Plan. During that discussion, the Council requested additional information regarding the process used to select Dyett & Bhatia with whom to negotiate a consultant agreement.

On September 10, 2004, the City sent a Request for Qualifications (RFQ) to several firms to begin the process of selecting a firm to prepare the Transit Area Plan. Eight firms responded to the RFQ. The qualifications submitted were reviewed and rated by a committee made up of senior Engineering Division and Planning Department staff. A short-list of four firms was prepared.

Given the schedules submitted by the firms who responded to the RFQ, anticipated project cost, and the eagerness with which property owners in the project area were interested in moving forward with development proposals, staff split the project into two phases. Staff selected Dyett & Bhatia with whom to negotiate a contract for Phase I. Dyett & Bhatia was ranked highest by the committee for their RFQ response.

On November 16, 2004, the City Council directed the City Manager to negotiate a contract with the Firm of Dyett & Bhatia to prepare Phase I of the Transit Area Plan for the ±400 acre area surrounding two VTA light rail stations and the future Montague / Capitol BART station. The 4½ month Phase I process entailed conducting a community visioning exercise and the preparation of preliminary concept plans with the purpose of giving developers future land use guidance in the quickest time possible. Dyett & Bhatia began work in December 2004, after a series of stakeholder interviews and two design charrettes, and presented three draft concept plans to the Planning Commission on March 23, 2005. The Planning Commission recommended that two alternative concept plans be forwarded to the City Council for approval. The Council adopted the two plans in concept on April 5, 2005, and gave staff direction to initiate Phase II of the Transit Area Plan with the two alternatives as starting points.

### **Phase II consultant selection process:**

On May 18, 2005, staff sent invitations to the four firms on the original RFQ short-list to interview and present proposals for the preparation of Phase II of the Transit Area Plan. Only Dyett & Bhatia was interviewed because the other firms declined to pursue the project. The three short-listed firms that were not interviewed were: Community Design + Architecture, BMS Design Group, and ROMA. Letters were submitted by each of the firms giving the reasons why they did not participate.

Community Design + Architecture declined to interview because several of his team members were not available for the interview time and because they were concerned that they would not have enough time given current work loads, etc., to prepare a strong proposal or set of interview materials. BMS Design Group wrote only to state that they had elected not to participate. ROMA responded that it would be difficult to take on this project after much of the initial planning work had taken place and after many of the fundamental design decisions had been made. They also stated that they believed that the initial planning materials have been prepared in a professional manner, and that they did not see the need, or efficiency, in changing consultants at this point in the process. Although staff was disappointed that these firms chose to withdraw from the selection process, it was not a surprise given consultants typically invest a lot of time and money to prepare full proposals for a project as large as Phase II given the longer timeframe and multiple components involved (EIR, general plan amendment, specific plan amendment, rezoning, zoning ordinance changes, design guidelines and streetscape plans).

It was always the intent of staff that the selection of a consultant for Phase II would be a competitive process in order to secure the best services for the City and to ensure that professional and ethical standards for consultant selection are upheld. As stated above, four consultants were sent invitations to interview for Phase II and only one accepted the invitation to be interviewed. At the interview, Dyett & Bhatia made an effective presentation and proposed a detailed Scope Of Work that staff believes can effectively accommodate the product and timing needs of the City.

PROJECT NAME:

CITY COUNCIL APPROVAL

PROJECT NO.:

DATE:

**CONSULTING SERVICES AGREEMENT BETWEEN  
THE CITY OF MILPITAS AND DYETT & BHATIA URBAN AND REGIONAL PLANNERS  
(PHASE II)**

THIS AGREEMENT for consulting services is made by and between the City of Milpitas ("City") and Dyett & Bhatia Urban & Regional Planners ("Consultant") as of \_\_\_\_\_ in Milpitas, California.

**AGREEMENT**

**Section 1. SERVICES.** Subject to the terms and conditions set forth in this Agreement, Consultant shall provide to City the services described in the Scope of Work attached as Exhibit A at the time and place and in the manner specified therein. In the event of a conflict in or inconsistency between the terms of this Agreement and Exhibit A, the Agreement shall prevail.

- 1.1 Term of Services.** The term of this Agreement shall begin on the date first noted above and shall end two years from that date, or \_\_\_\_\_, and Consultant shall complete all work described in Exhibit A prior to that date, unless the term of the Agreement is otherwise terminated or extended, as provided for in Section 8. The time provided to Consultant to complete the services required by this Agreement shall not affect the City's right to terminate the Agreement, as provided for in Section 8.
- 1.2 Standard of Performance.** Consultant shall perform all services required pursuant to this Agreement in the manner and according to the currently prevailing professional standards observed by a practitioner of the profession in which Consultant is engaged in the geographical area in which Consultant practices its profession. Consultant shall prepare all work products required by this Agreement in a professional manner and shall conform to the highest and best professional standards of quality observed by a person practicing in Consultant's profession.
- 1.3 Professional Skill.** It is mutually agreed by the parties that City is relying upon the professional skill of the consultant as a specialist in the work, and Consultant represents to the City that its work shall conform to the highest and best professional standards of the profession. Acceptance of the Consultant's work by the City does not operate as a release of Consultant's representations. It is intended that Consultant's work shall conform to the highest and best standards of accuracy, completeness and coordination.
- 1.4 Assignment of Personnel.** Consultant shall assign only competent personnel to perform services pursuant to this Agreement. Exhibit A shall name any specific personnel (including title and hourly charge rate) who shall be performing services. In the event that City, in its sole discretion, at any time during the term of this Agreement, desires the reassignment of any such persons, Consultant shall,

immediately upon receiving notice from City of such desire of City, reassign such person or persons.

- 1.5 **Time.** Consultant shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary to meet the standard of performance provided in Section 1 above and to complete Consultant's obligations hereunder. Consultant must request at least a week in advance in writing City's approval for any changes to this Agreement's performance schedule and/or dates for deliverables.

**Section 2. COMPENSATION.** City hereby agrees to pay Consultant an amount not to exceed six hundred seventy two thousand and six hundred thirty-five dollars and no cents, \$672,635.00 for all services to be performed and reimbursable costs incurred under this Agreement. City shall pay Consultant for services rendered pursuant to this Agreement at the time and in the manner set forth herein. The payments specified below shall be the only payments from City to Consultant for services rendered pursuant to this Agreement. Consultant shall submit all invoices to City in the manner specified herein. Except as specifically authorized by City, Consultant shall not bill City for duplicate services performed by more than one person.

Consultant and City acknowledge and agree that compensation paid by City to Consultant under this Agreement is based upon Consultant's estimated costs of providing the services required hereunder, including salaries and benefits of employees and subcontractors of Consultant. Consultant further represents that the amount of the compensation specified in this Section 2 shall be a guaranteed maximum price. Hourly rates for personnel performing services shall be as shown in Exhibit B. Consequently, the parties further agree that compensation hereunder is intended to include the costs of contributions to any pensions and/or annuities to which Consultant and its employees, agents, and subcontractors may be eligible. City therefore has no responsibility for such contributions beyond compensation required under this Agreement.

- 2.1 **Invoices.** Consultant shall submit invoices, not more often than once a month during the term of this Agreement, based on the cost for services performed and reimbursable costs incurred during the billing period. Invoices shall contain the following information:

- Serial identification of bills ( "Invoice #");
- The beginning and ending dates of the billing period;
- A Task Summary containing the City project name and number, purchase order number, Project Manager, original contract amount, the amount of prior billings, the total due this period, the balance available under the Agreement, and the percentage of completion, if applicable;
- At City's option, for each work item in each task, a copy of the applicable time entries or time sheets shall be submitted showing the name of the person doing the work, the hours spent by each person, a brief description of the work, and each reimbursable expense;
- The total number of hours of work performed under the Agreement by Consultant and each employee, agent, and subcontractor of Consultant

performing services hereunder, as well as a separate notice when the total number of hours of work by Consultant and any individual employee, agent, or subcontractor of Consultant reaches or exceeds 800 hours, which shall include an estimate of the time necessary to complete the work described in Exhibit A;

- The Consultant's signature.

**2.2 Monthly Payment.** City shall make monthly payments, based on invoices received, for services satisfactorily performed, and for authorized reimbursable costs incurred. Satisfactory performance shall be defined and identified by percentage of each particular task completed. Consultant shall separately identify in each invoice to the City the percentage of completion for each task. City shall have thirty (30) days from the receipt of an invoice that complies with all of the requirements above and is otherwise acceptable to the City to pay Consultant. Ten (10) percent shall be retained by the City from each contract billing until the completion of the contract unless authorized differently by City. In the event that an invoice is not acceptable to the City, said invoice shall be returned to Consultant within thirty (30) days of the City's receipt of the invoice with a detailed explanation of the deficiency. City's obligation to pay a returned invoice shall not arise earlier than thirty (30) days after resubmission of the corrected invoice.

**2.3 Late Penalty on Deliverable Schedule.** Payment for each deliverable shall be subject to a penalty which will be deducted from the cost of the deliverable that is received by the City after the dates noted in Exhibit A, Project Schedule. The penalty for each late deliverable shall be 5% of the deliverable's cost. Penalties shall apply only when Consultant defaults upon the deliverable schedule and a written pre-approval authorizing the late deliverable or deliverables has not been granted by the City in writing. Furthermore, City shall have 24 hours, excluding weekends and holidays, to respond to Consultant's request for extensions of deliverable dates. In the event City does not grant Consultant's request for an extension to a deliverable date, Consultant shall be allowed one month to cure the default in the deliverable schedule. If cured according to this provision, no penalty shall be charged. City shall grant reasonable extensions on deliverables if there are circumstances beyond Consultant's control preventing or limiting Consultant's ability to meet the agreed upon deliverable schedule.

**2.4 Total Payment.** City shall pay for the services to be rendered by Consultant pursuant to this Agreement. City shall not pay any additional sum for any expense or cost whatsoever incurred by Consultant in rendering services pursuant to this Agreement. City shall make no payment for any extra, further, or additional service pursuant to this Agreement.

In no event shall Consultant submit any invoice for an amount in excess of the maximum amount of compensation provided above either for a task or for the entire Agreement, unless the Agreement is modified prior to the submission of such an invoice by a properly executed change order or amendment. In the event

that Consultant identifies additional work outside the scope of services specified in Exhibit A that may be required to complete the work required under this Agreement, Consultant shall immediately notify the City and shall provide a written not-to-exceed price for performing this additional work. Consultant shall not perform extra work without specific written City approval.

2.5 **Hourly Fees.** Fees for work performed by Consultant on an hourly basis shall not exceed the amounts shown on Exhibit B.

2.6 **Reimbursable Expenses.** Reimbursable expenses are shown on Exhibit B, and shall not exceed nineteen thousand one hundred ninety-nine dollars (\$19,199.00). Expenses not listed in Exhibit B are not chargeable to City. Reimbursable expenses are included in the total not-to-exceed amount of compensation provided under this Agreement.

Reimbursable expenses shall be limited to travel, graphic printing costs, copying, fax and postage expenses.

2.7 **Payment of Taxes.** Consultant is solely responsible for the payment of employment taxes incurred under this Agreement and any other applicable federal or state taxes.

2.8 **Payment upon Termination.** In the event that the City or Consultant terminates this Agreement pursuant to Section 8, the City shall compensate the Consultant for all outstanding costs and reimbursable expenses incurred for work satisfactorily completed as of the date of written notice of termination. Consultant shall maintain adequate logs and timesheets in order to verify costs incurred to that date. The City shall have no obligation to compensate Consultant for work not verified by logs or timesheets.

2.9 **Authorization to Perform Services.** The Consultant is not authorized to perform any services or incur any costs whatsoever under the terms of this Agreement until receipt of a written Notice to Proceed from the City.

**Section 3. FACILITIES AND EQUIPMENT.** Except as set forth herein, Consultant shall, at its sole cost and expense, provide all facilities and equipment that may be necessary to perform the services required by this Agreement. City shall make available to Consultant only the facilities and equipment listed in this section, and only under the terms and conditions set forth herein.

City shall furnish physical facilities such as desks, filing cabinets, and conference space, as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of the City. The location, quantity, and time of furnishing those facilities shall be in the sole discretion of City. In no event shall City be obligated to furnish any facility that may involve incurring any direct expense, including but not limited to computer, cellular telephone, long-distance telephone, or other communication charges, vehicles, and reproduction facilities.

**Section 4. INSURANCE REQUIREMENTS.** Before beginning any work under this Agreement, Consultant shall procure "occurrence coverage" insurance against claims for injuries to persons or damages to property that may arise from or in connection with the performance of the work hereunder by the Consultant and its agents, representatives, employees, and subcontractors. Consultant shall provide proof satisfactory to City of such insurance that meets the requirements of this section and under forms of insurance satisfactory in all respects to the City. Consultant shall maintain the insurance policies required by this section throughout the term of this Agreement and shall produce said policies to the City upon demand. The cost of such insurance shall be included in the Consultant's price. Consultant shall not allow any subcontractor to commence work on any subcontract until Consultant has obtained all insurance required herein for the subcontractor(s) and provided evidence thereof to City. Verification of the required insurance shall be submitted and made part of this Agreement prior to execution.

**4.1 Workers' Compensation.** Consultant shall, at its sole cost and expense, maintain Statutory Workers' Compensation Insurance and Employer's Liability Insurance for any and all persons employed directly or indirectly by Consultant. The Statutory Workers' Compensation Insurance and Employer's Liability Insurance shall be provided with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident. In the alternative, Consultant may rely on a self-insurance program to meet those requirements, but only if the program of self-insurance complies fully with the provisions of the California Labor Code. Determination of whether a self-insurance program meets the standards of the Labor Code shall be solely in the discretion of the City Attorney. The insurer, if insurance is provided, or the Consultant, if a program of self-insurance is provided, shall waive all rights of subrogation against the City and its officers, officials, employees, and volunteers for loss arising from work performed under this Agreement.

**4.2 Commercial General and Automobile Liability Insurance.**

**4.2.1 General requirements.** Consultant, at its own cost and expense, shall maintain commercial general and automobile liability insurance for the term of this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000.00) per occurrence, combined single limit coverage for risks associated with the work contemplated by this Agreement. If a Commercial General Liability Insurance or an Automobile Liability form or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to the work to be performed under this Agreement or the general aggregate limit shall be at least twice the required occurrence limit. Such coverage shall include but shall not be limited to, protection against claims arising from bodily and personal injury, including death resulting therefrom, and damage to property resulting from activities contemplated under this Agreement, including the use of owned and non-owned automobiles.

**4.2.2 Minimum scope of coverage.** Commercial general coverage shall be at least as broad as Insurance Services Office *Commercial General Liability* occurrence form CG 0001 (ed. 11/88) or Insurance Services Office form number GL 0002 (ed. 1/73) covering comprehensive General Liability and Insurance Services Office form number GL 0404 covering Broad Form Comprehensive General Liability. Automobile coverage shall be at least as broad as Insurance Services Office *Automobile Liability* form CA 0001 (ed. 12/90) Code 1 ("any auto"). No endorsement shall be attached limiting the coverage.

**4.2.3 Additional requirements.** Each of the following shall be included in the insurance coverage or added as an endorsement at least as broad as Insurance Services Office form number CG 20 10 (11/85 ed.) to the policy:

- a. City and its officers, employees, agents, contractors, consultants, and volunteers shall be covered as insureds with respect to each of the following: liability arising out of activities performed by or on behalf of Consultant, including the insured's general supervision of Consultant; products and completed operations of Consultant; premises owned, occupied, or used by Consultant; and automobiles owned, leased, or used by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to City or its officers, employees, agents, contractors, consultants, or volunteers.
- b. The insurance shall cover on an occurrence or an accident basis, and not on a claims-made basis.
- c. An endorsement must state that coverage is primary insurance with respect to the City and its officers, officials, employees, contractors, consultants, and volunteers, and that no insurance or self-insurance maintained by the City shall be called upon to contribute to a loss under the coverage.
- d. Any failure of CONSULTANT to comply with reporting provisions of the policy shall not affect coverage provided to CITY and its officers, employees, agents, and volunteers.
- e. An endorsement shall state that coverage shall not be suspended, voided, or canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except for ten (10) days for non-payment of premium.

**4.3 Professional Liability Insurance.** If Consultant shall be performing licensed professional services, Consultant shall maintain for the period covered by this



Agreement professional liability insurance for licensed professionals performing work pursuant to this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) covering the licensed professionals' errors and omissions.

- 4.3.1 Any deductible or self-insured retention shall not exceed \$150,000 per claim.
- 4.3.2 An endorsement shall state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits, except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City, except for ten (10) days for non-payment of premium.
- 4.3.3 Reserved
- 4.3.4 The following provisions shall apply if the professional liability coverages are written on a claims-made form:
  - a. The retroactive date of the policy must be shown and must be before the date of the Agreement.
  - b. Reserved
  - c. If coverage is canceled or not renewed and it is not replaced with another claims-made policy form with a retroactive date that precedes the date of this Agreement, Consultant must provide extended reporting coverage for a minimum of five years after completion of the Agreement or the work. The City shall have the right to exercise, at the Consultant's sole cost and expense, any extended reporting provisions of the policy, if the Consultant cancels or does not renew the coverage.
  - d. A copy of the claim reporting requirements must be submitted to the City prior to the commencement of any work under this Agreement.

#### 4.4 Requirements for All Policies.

- 4.4.1 Acceptability of Insurers. All insurance required by this section is to be placed with insurers with a Bests' rating of no less than A.
- 4.4.2 Verification of coverage. Prior to beginning any work under this Agreement, Consultant shall furnish City with certificates of insurance and with original endorsements effecting coverage required herein. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The

City reserves the right to require complete, certified copies of all required insurance policies at any time.

**4.4.3 Subcontractors.** Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

**4.4.4 Deductibles and Self-Insured Retentions.** Consultant shall disclose to and obtain the approval of City for the self-insured retentions and deductibles before beginning any of the services or work called for by any term of this Agreement.

During the period covered by this Agreement, only upon the prior express written authorization of the City, Consultant may increase such deductibles or self-insured retentions with respect to City, its officers, employees, agents, contractors, consultants, and volunteers. The City may condition approval of an increase in deductible or self-insured retention levels with a requirement that Consultant procure a bond, guaranteeing payment of losses and related investigations, claim administration, and defense expenses that is satisfactory in all respects to the City.

**4.4.5 Notice of Reduction in Coverage.** In the event that any coverage required by this section is reduced, limited, or materially affected in any other manner, Consultant shall provide written notice to City at Consultant's earliest possible opportunity and in no case later than five days after Consultant is notified of the change in coverage.

**4.5 Remedies.** In addition to any other remedies City may have if Consultant fails to provide or maintain any insurance policies or policy endorsements to the extent and within the time herein required, City may, at its sole option exercise any of the following remedies, which are alternatives to other remedies City may have and are not the exclusive remedy for Consultant's breach:

- Obtain such insurance and deduct and retain the amount of the premiums for such insurance from any sums due under the Agreement;
- Order Consultant to stop work under this Agreement or withhold any payment that becomes due to Consultant hereunder, or both stop work and withhold any payment, until Consultant demonstrates compliance with the requirements hereof; and/or
- Declare Consultant in material breach of the Agreement and terminate the Agreement.

- 4.6 **Waiver.** The Risk Manager of the City has the authority to waive or vary any provision of Sections 4.2 through 4.5. Any such waiver or variation shall not be effective unless made in writing.

**Section 5. INDEMNIFICATION AND CONSULTANT'S RESPONSIBILITIES.** Consultant shall indemnify, defend with counsel reasonably acceptable to the City, and hold harmless the City and its officials, officers, employees, agents, contractors, consultants, and volunteers from and against any and all losses, liability, claims, suits, actions, damages, and causes of action arising out of any personal injury, bodily injury, loss of life, or damage to property, or any violation of any federal, state, or municipal law or ordinance, to the extent caused, in whole or in part, by the willful misconduct or negligent acts or omissions of Consultant or its employees, subcontractors, or agents, by acts for which they could be held strictly liable, or by the quality or character of their work. The foregoing obligation of Consultant shall not apply when (1) the injury, loss of life, damage to property, or violation of law arises wholly from the negligence or willful misconduct of the City or its officers, employees, agents, contractors, consultants, or volunteers and (2) the actions of Consultant or its employees, subcontractor, or agents have contributed in no part to the injury, loss of life, damage to property, or violation of law. It is understood that the duty of Consultant to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code. Acceptance by City of insurance certificates and endorsements required under this Agreement does not relieve Consultant from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply to any damages or claims for damages whether or not such insurance policies shall have been determined to apply. By execution of this Agreement, Consultant acknowledges and agrees to the provisions of this Section and that it is a material element of consideration.

**Section 6. STATUS OF CONSULTANT.**

- 6.1 **Independent Contractor.** At all times during the term of this Agreement, Consultant shall be an independent contractor and shall not be an employee of City. City shall have the right to control Consultant only insofar as the results of Consultant's services rendered pursuant to this Agreement and assignment of personnel pursuant to Subparagraph 1.3. Otherwise, City shall not have the right to control the means by which Consultant accomplishes services rendered pursuant to this Agreement. Notwithstanding any other City, state, or federal policy, rule, regulation, law, or ordinance to the contrary, Consultant and any of its employees, agents, and subcontractors providing services under this Agreement shall not qualify for or become entitled to, and hereby agree to waive any and all claims to, any compensation, benefit, or any incident of employment by City, including but not limited to eligibility to enroll in the California Public Employees Retirement System (PERS) as an employee of City and entitlement to any contribution to be paid by City for employer contributions and/or employee contributions for PERS benefits.
- 6.2 **Consultant No Agent.** Except as City may specify in writing, Consultant shall have no authority, express or implied, to act on behalf of City in any capacity

whatsoever as an agent. Consultant shall have no authority, express or implied, pursuant to this Agreement to bind City to any obligation whatsoever.

**Section 7. LEGAL REQUIREMENTS.**

7.1 **Governing Law.** The laws of the State of California shall govern this Agreement.

7.2 **Compliance with Applicable Laws.** Consultant and any subcontractors shall comply with all laws applicable to the performance of the work hereunder.

7.3 **Other Governmental Regulations.** To the extent that this Agreement may be funded by fiscal assistance from another governmental entity, Consultant and any subcontractors shall comply with all applicable rules and regulations to which City is bound by the terms of such fiscal assistance program.

7.4 **Licenses and Permits.** Consultant represents and warrants to City that Consultant and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions. Consultant represents and warrants to City that Consultant and its employees, agents, any subcontractors shall, at their sole cost and expense, keep in effect at all times during the term of this Agreement any licenses, permits, and approvals that are legally required to practice their respective professions and to perform this Agreement.

7.5 **Nondiscrimination and Equal Opportunity.** Consultant shall not discriminate, on the basis of a person's race, religion, color, national origin, age, physical or mental handicap or disability, medical condition, marital status, sex, or sexual orientation, against any employee, applicant for employment, subcontractor, bidder for a subcontract, or participant in, recipient of, or applicant for any services or programs provided by Consultant under this Agreement. Consultant shall comply with all applicable federal, state, and local laws, policies, rules, and requirements related to equal opportunity and nondiscrimination in employment, contracting, and the provision of any services that are the subject of this Agreement, including but not limited to the satisfaction of any positive obligations required of Consultant thereby.

Consultant shall include the provisions of this Subsection in any subcontract approved by the City or this Agreement.

**Section 8. TERMINATION AND MODIFICATION.**

8.1 **Termination.** City may terminate this Agreement at any time and without cause upon written notification to Consultant.

In the event of termination, Consultant shall be entitled to compensation for services performed prior to the effective date of termination as provided in Section

2. City, however, may condition payment of such compensation upon Consultant delivering to City any or all documents, photographs, computer software, video and audio tapes, and other materials provided to Consultant or prepared by or for Consultant or the City in connection with this Agreement.

- 8.2 **Extension.** City may, in its sole and exclusive discretion, extend the end date of this Agreement beyond that provided for in Subsection 1.1. Any such extension shall be specified in writing by the City. Consultant understands and agrees that, if City issues such an extension, City shall have no obligation to provide Consultant with compensation beyond the maximum amount provided for in this Agreement. Similarly, unless authorized by the City, City shall have no obligation to reimburse Consultant for any otherwise reimbursable expenses incurred during the extension period.

City and Contractor agree that City may allow an extension, at Consultant's written request, in the following limited circumstances: (1) Where City and Consultant mutually agree a reasonable extension is necessary; or (2) City and Contractor agree that circumstances and factors beyond Consultant's control require a reasonable extension.

- 8.3 **Amendments.** The parties may amend this Agreement only by a writing signed by all the parties.

- 8.4 **Assignment and Subcontracting.** City and Consultant recognize and agree that this Agreement contemplates personal performance by Consultant and is based upon a determination of Consultant's unique personal competence, experience, and specialized personal knowledge. Moreover, a substantial inducement to City for entering into this Agreement was and is the professional reputation and competence of Consultant. Consultant may not assign this Agreement or any interest therein without the prior written approval of the City. Consultant shall not subcontract any portion of the performance contemplated and provided for herein, other than to the subcontractors listed in the Consultant's proposal, without prior written approval of the City. Where Consultant determines that substitution of a subconsultant is essential to meet the project objectives and schedule, Consultant shall inform the City in writing; approval such substitution shall not be unreasonably withheld by the City.

- 8.5 **Survival.** All obligations arising prior to the termination of this Agreement and all provisions of this Agreement allocating liability between City and Consultant shall survive the termination of this Agreement.

- 8.6 **Options upon Breach by Consultant.** If Consultant materially breaches any of the terms of this Agreement, City's remedies shall include, but not be limited to, any or all of the following:

- 8.6.1 Immediate cancellation of the Agreement;

- 8.6.2 Retention of the plans, specifications, drawings, reports, design documents, and any other work product prepared by Consultant pursuant to this Agreement prior to cancellation.

**Section 9. KEEPING AND STATUS OF RECORDS.**

- 9.1 **Records Created as Part of Consultant's Performance.** All reports, data, maps, models, charts, studies, surveys, calculations, photographs, memoranda, plans, studies, specifications, records, files, or any other documents or materials, in electronic or any other form, that Consultant prepares or obtains pursuant to this Agreement and that relate to the matters covered hereunder shall be the property of the City. Consultant hereby agrees to deliver those documents to the City at any time upon demand of the City. It is understood and agreed that the documents and other materials, including but not limited to those described above, prepared pursuant to this Agreement are prepared specifically for the City and are not necessarily suitable for any future or other use. Failure by Consultant to deliver these documents to the City within the time period specified by the City shall be a material breach of this Agreement. City and Consultant agree that, until final approval by City, all data, plans, specifications, reports and other documents are preliminary drafts not kept by the City in the ordinary course of business and will not be disclosed to third parties without prior written consent of both parties. All work product submitted to the City pursuant to this Agreement shall be deemed a "work for hire." Upon submission of any work for hire pursuant to this Agreement, and acceptance by the City as complete, non-exclusive title to copyright of said work for hire shall transfer to the City. The compensation recited in Exhibit B shall be deemed to be sufficient consideration for said transfer of copyright. Consultants and sub-consultants retain the right to use any project records, documents and materials for marketing of their professional services.
- 9.2 **Consultant's Books and Records.** Consultant shall maintain any and all ledgers, books of account, invoices, vouchers, canceled checks, and other records or documents evidencing or relating to charges for services or expenditures and disbursements charged to the City under this Agreement for a minimum of three (3) years, or for any longer period required by law, from the date of final payment to the Consultant to this Agreement.
- 9.3 **Inspection and Audit of Records.** Any records or documents that Section 9.2 of this Agreement requires Consultant to maintain shall be made available for inspection, audit, and/or copying at any time during regular business hours, upon oral or written request of the City. Under California Government Code Section 8546.7, if the amount of public funds expended under this Agreement exceeds TEN THOUSAND DOLLARS (\$10,000.00), the Agreement shall be subject to the examination and audit of the State Auditor, at the request of City or as part of any audit of the City, for a period of three (3) years after final payment under the Agreement.

**Section 10 MISCELLANEOUS PROVISIONS.**

- 10.1 **Attorneys' Fees.** If a party to this Agreement brings any action, including an action for declaratory relief, to enforce or interpret the provision of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees in addition to any other relief to which that party may be entitled. The court may set such fees in the same action or in a separate action brought for that purpose.
- 10.2 **Venue.** In the event that either party brings any action against the other under this Agreement, the parties agree that trial of such action shall be vested exclusively in the state courts of California in the County of Santa Clara or in the United States District Court for the Northern District of California.
- 10.3 **Severability.** If a court of competent jurisdiction finds or rules that any provision of this Agreement is invalid, void, or unenforceable, the provisions of this Agreement not so adjudged shall remain in full force and effect. The invalidity in whole or in part of any provision of this Agreement shall not void or affect the validity of any other provision of this Agreement.
- 10.4 **No Implied Waiver of Breach.** The waiver of performance or any breach of a specific provision of this Agreement does not constitute a waiver of any other breach of that term or any other term of this Agreement.
- 10.5 **Successors and Assigns.** The provisions of this Agreement shall inure to the benefit of and shall apply to and bind the successors and assigns of the parties.
- 10.6 **Use of Recycled Products.** Consultant shall prepare and submit all reports, written studies and other printed material on recycled paper to the extent it is available at equal or less cost than virgin paper.
- 10.7 **Conflict of Interest.** Consultant may serve other clients, but none whose activities within the corporate limits of City or whose business, regardless of location, would place Consultant in a "conflict of interest," as that term is defined in the Political Reform Act, codified at California Government Code Section 81000 *et seq.*

Consultant shall not employ any City official in the work performed pursuant to this Agreement. No officer or employee of City shall have any financial interest in this Agreement that would violate California Government Code Sections 1090 *et seq.*

Consultant hereby warrants that it is not now, nor has it been in the previous twelve (12) months, an employee, agent, appointee, or official of the City. If Consultant were an employee, agent, appointee, or official of the City in the previous twelve months, Consultant warrants that it did not participate in any manner in the forming of this Agreement. Consultant understands that, if this

Agreement is made in violation of Government Code §1090 *et. seq.*, the entire Agreement is void and Consultant will not be entitled to any compensation for services performed pursuant to this Agreement, including reimbursement of expenses, and Consultant will be required to reimburse the City for any sums paid to the Consultant. Consultant understands that, in addition to the foregoing, it may be subject to criminal prosecution for a violation of Government Code § 1090 and, if applicable, may be disqualified from holding public office in the State of California.

Consultant certifies that it has not paid any direct or contingent fee, contribution, donation or consideration of any kind to any firm, organization, or person (other than a bona fide employee of Consultant) in connection with procuring this Agreement, nor has Consultant agreed to employ or retain any firm, organization, or person in connection with the performance of this Agreement as a condition for obtaining this Agreement.

**10.8 Solicitation.** Consultant agrees not to solicit business at any meeting, focus group, or interview related to this Agreement, either orally or through any written materials.

**10.9 Contract Administration.** This Agreement shall be administered by Joe Ezeokeke, who is authorized to act for, and on behalf of, City. All correspondence shall be directed to or through the Contract Administrator or his or her designee.

**10.10 Notices.** Any written notice to Consultant shall be sent to:

Dyett & Bhatia Urban & Regional Planners  
755 Sansome Street, Suite 400  
San Francisco, CA 94111

Any written notice to City shall be sent to:  
Tambri Heyden, Planning Manager  
455 East Calaveras Boulevard  
Milpitas, California 95035

**10.11 Reserved**

**10.12 Reserved**

**10.13 Integration.** This Agreement, including the exhibits, represents the entire and integrated agreement between City and Consultant and supersedes all prior negotiations, representations, or agreements, either written or oral.

**10.14 Exhibits.** All exhibits referenced in this Agreement are incorporated by reference herein.



CITY OF MILPITAS

CONSULTANT

\_\_\_\_\_  
Charles Lawson, Interim City Manager

\_\_\_\_\_  
Rajeev Bhattia, Principal

ATTEST:

\_\_\_\_\_  
Mary Lavelle, City Clerk

\_\_\_\_\_  
Taxpayer Identification Number

APPROVED AS TO FORM:

\_\_\_\_\_  
Steven T. Mattas, City Attorney

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Department/Division Head

APPROVED:

\_\_\_\_\_  
Finance Director/Risk Manager

Attachments:

Exhibit A:	Scope of Services and Schedule
Exhibit B:	Compensation Schedule, personnel and rates
Exhibit C:	Insurance Coverage Documents

## Scope of Work

### PROJECT COMPONENTS

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This project has several different components: Specific Plan, Economics Reports, Environmental Impact Report, General Plan Amendment, Midtown Specific Plan Amendment, Zoning, and Design Guidelines. We have outlined the basic contents of each document in order to clarify our proposal. The initials of team members responsible for individual chapters are noted in parentheses. The final outline and organization of the products may be revised, but the content will not change.

#### **Specific Plan**

We propose that the Transit Subarea Specific Plan be a stand alone document that builds on the Milpitas Midtown Specific Plan. The Transit Subarea Plan will have a much more detailed scale than the Midtown Specific Plan, establishing a street layout, development types for each parcel, building to street relationships for each type of street, park locations and sizes, etc. Where policies, development standards, and/or design guidelines have already been established in the Midtown Specific Plan, and directly apply to this area, we will either reference them or include them in this document. The preliminary outline of the document contents is as follows:

##### *Introduction (D&B)*

Explain goals and process for development of the Specific Plan.

##### *Background (D&B)*

Present all key information about existing conditions and development issues. Much of this was prepared in the Concept Plan phase; some additional information about development issues is likely to be added.

##### *Land Use, Circulation, and Community Design (D&B, Field, F&P, and FTB)*

- Land Use Plan – Uses, Density, Height, District Character
- Urban Design Plan – Streetscape, Pedestrian Bridges, Trails, Parks
- Circulation Plan: Street System and Pedestrian/Bike Routes
- Development Pattern – Size, Dimension, and Pattern of Blocks
- Network of Parks, Trails, and Public Gathering Places

##### *Sub Areas: Development Policies, Standards, and Design Guidelines (D&B Field, and FTB)*

For each sub-area we will establish policies, development standards, and design guidelines for the topics listed below. Illustrations will be used to the maximum extent possible. We will include a section focused solely on residential development, because residential building types occur in all the sub-areas. The architects on our team will create diagrammatic site plans and building envelopes to test out the densities and development standards, and will prepare illustrative three-dimensional drawings of up to five key focus areas (likely to be one for each sub-area.) The streetscape designers will prepare Typical Street Plan Segments and Sections for all types of streets, selected pedestrian linkages, and gateway concepts at selected intersections, showing relationship of buildings to streets and overall public space character.

**Exhibit A:  
Scope of Work**

- Community Character - Building Types, Building Height, and Other Defining Features
- Streetscape Character and Streetscape Design:
  - Great Mall Parkway – up to 3 segments
  - Montague Expressway – up to 2 segments
  - Montague Expressway – Penitencia Creek pedestrian bridge (elevation only)
  - Montague Expressway – Piper Drive pedestrian bridge (elevation only)
  - Milpitas Blvd Extension – up to 2 segments
  - McCandless Drive – up to 2 segments
  - Piper Drive – 1 segment
  - Falcon Drive – 1 segment
  - Centrepont to mall connection (Great Mall Pkwy to mall bldg) – 1 segment
  - McCandless to mall connection (Great Mall Pkwy to mall bldg) – 1 segment
  - Planned cross-BART track pedestrian connection (Great Mall to Piper Dr.)
  - Pedestrian crossing – at-grade Great Mall Pkwy-Milpitas Blvd Ext intersection (plan only)
  - Great Mall Pkwy-Montague Expressway intersection – perspective sketch of grade sep
  - Prepare Gateway Intersection Concept Illustrations and Annotations
    - Montague Expressway/Great Mall Parkway - Plan & Section
    - South Main Street/Great Mall Parkway – Plan & Section
  - Prepare Illustrations & annotations of Primary Street Furnishings Types
    - Street light types – arterial/boulevard; avenue; pedestrian scale
    - Tree types – up to 4
- Building Envelopes, and Building Relationship to the street – Illustrations
- Open Space – Size, Types, General Design Parameters
- Parking Location and Design
- Residential Development Parameters

***Implementation Program (D&B, ERA, F&P, FTB, and IC)***

- Overall Implementation Strategy and Phasing Recommendations
- Infrastructure Improvements Required:
  - Streets: New Streets, Street Improvements, Fair Share Traffic Mitigations (D&B, F&P)
  - Streetscape Improvements and Pedestrian Connections (D&B, Field)
  - Parks (D&B, Field)
  - Railroad Alterations (D&B, IC)
  - Utilities – Water Supply, Water Infrastructure, Recycled Water, Sanitary Sewer Infrastructure and Treatment Capacity, Storm water and Flood Control (IC)
- Cost Estimates and Financing Mechanisms for Area-wide (not site specific) Infrastructure (IC, ERA)

## Exhibit A: Scope of Work

- Financing Mechanisms for Public Services (ERA)
- Implementation Work Program: Tasks for City Departments, Property Owners, and Outside Public Agencies to Establish Funding Mechanisms and Provide Infrastructure (D&B and Team)

### **Economics Reports (ERA)**

Economics Research Associates will prepare three separate analyses which will provide critical input for the Specific Plan:

*Market Demand and Absorption Analysis.* ERA will review their previous work and the concept plan and conduct a market absorption analysis, estimating how much residential, office, hotel, and retail space can be absorbed over the 25 year time horizon of the plan. ERA will prepare a memo presenting the results of this analysis, and recommendations for revisions and more detailed development of the concept plan.

*Fiscal Impact Analysis.* ERA will prepare a fiscal impact analysis of the Concept Plan and Alternative Concept Plan, and prepare Specific Plan recommendations to ensure that the City has a stable and beneficial fiscal situation as the area is developed. These could include recommendations for adjusting the land use plan, establishing public services financing mechanisms such as community facilities districts, and other types of fiscal recommendations.

*Financing Recommendations.* ERA will research existing infrastructure financing mechanisms of the City of Milpitas. Once the Specific Plan is prepared and infrastructure requirements and costs are defined, ERA will prepare the sections of the Specific Plan related to infrastructure financing and phasing, with recommendations for how to structure the financing of roads, utilities, community design improvements, parks, paths/bikeways, and any other recommended infrastructure.

### **Environmental Impact Report**

Dyett & Bhatia will coordinate preparation of a Draft EIR and Final EIR. Environmental Science Associates, Fehr & Peers, and the Infrastructure Consultant will prepare analysis of impacts and mitigations in their areas of technical expertise. The EIR will cover the following issues:

*Land Use and Population (D&B).* The analysis will analyze the consistency of proposed land use changes with existing adopted plans, and project the increases in residential units, non-residential square footage, jobs and population.

*Visual and Aesthetic Impacts (D&B)* Dyett & Bhatia will prepare up to three visual simulations or sketches of areas proposed for height limit increases. This section will also analyze potential shade and shadow impacts on public parks and public open space.

*Transportation (F&P).* Fehr & Peers will study impacts and mitigations for Automobile, Transit (Future BART, Light Rail, and Bus), Bicycle, and Pedestrian circulation. Transit usage for all land use types, and the degree to which transit use reduces vehicle trips will be analyzed. The degree to which pedestrian/bike circulation, mixed use and trip chaining reduces vehicle trips will also be quantified and discussed. Recommendations for parking ratios will be developed based on analysis of transit use and vehicle ownership patterns in transit areas. F&P will determine the percentage responsibility of Transit Subarea development for mitigation measure in San Jose. The percentage responsibility will be calculated based on peak hour trip contribution or some other method acceptable to Milpitas staff.

## Exhibit A: Scope of Work

*Hazardous Materials (ESA).* The focus of this analysis will be to identify existing soil and groundwater contamination, and the steps required to ensure that any contaminated areas (most likely to be found in former industrial areas) are suitable for future specified land uses (e.g. residential and commercial.)

*Seismic and Soil Hazards (ESA).* Information provided in the section will include a summary of existing and known hazard areas, including areas known to be subject to earthquake hazard, slope instability, and unstable soils. It will describe mitigations required to meet adopted safety standards.

*Air Quality (ESA).* Historic and current air quality information will be collected from Milpitas monitoring stations located in the study area and from information provided by the Bay Area Air Quality Management District (BAAQMD). Compliance with state and federal air pollution guidelines will be reviewed, areas of non-compliance documented, and action plans summarized. The section will also document the major sources of air pollution in the project study area (motor vehicles, and railroads, industrial) and identify existing sensitive receptor locations.

*Noise (ESA).* The focus of this analysis will be establishing noise contours, particularly in view of vehicular traffic, heavy rail, light rail, and future BART, and any mitigations necessary to ensure that noise levels are met for future residential and commercial uses.

*Biological Resources (ESA).* ESA will identify any special status plant or animal species in the area, assess the potential for impacts under the Specific Plan, and identify mitigations if needed. Given the developed nature of the area, this is not likely to be a major focus of the analysis, but there are drainage channels which may serve as habitat areas.

*Public Services (D&B).* This analysis will quantify demand for additional parks and recreation facilities, school facilities, and police and fire facilities. The Specific Plan will incorporate recommendations for how to meet the identified service need.

*Hydrology, Flooding, and Water Quality (IC).* This analysis will focus on identifying projects that mitigate flooding impacts on future development, in view of the fact that much of the study area is currently in an identified flood zone. Facilities needed to treat storm water will also be analyzed, in accordance with current Clean Water and NPDES standards.

*Public Utilities (IC).* This section will focus on an analysis of sewer treatment demand and capacity, as that is a major development constraint in the City of Milpitas. The analysis will also cover water supply and distribution, recycled water, and solid waste, as well as utility services for electric, gas, phone, and cable.

### **General Plan Amendment (D&B)**

The Specific Plan will serve as the General Plan text governing development of the Transit Subarea. Dyett & Bhatia will provide a summary paragraph and reference to the Specific Plan if the City wants to add text to the General Plan about the Transit Subarea. Dyett & Bhatia will prepare a General Plan map graphic to explain all the proposed General Plan Land Use Map amendments, which can serve as the attachment to an ordinance amending the General Plan. City staff will amend the official General Plan Land Use map after adoption.

**Exhibit A:  
Scope of Work**

**Midtown Specific Plan Amendment**

There will need to be some amendments to the Midtown Specific Plan to ensure consistency between the Midtown Specific Plan and the new Transit Subarea Specific Plan. At this point, we do not see major conflicts between the text of the Midtown Specific Plan and the Transit Area Concept Plan. We believe we can ensure consistency with the Midtown Specific Plan by simply amending the land use maps and adding references in the Midtown Specific Plan to the new Transit Subarea Specific Plan.

**Zoning (D&B)**

*Zoning Code Revisions*

The major zoning work needed to implement the Transit Subarea Plan will be to develop provisions for two new land use districts: the Boulevard Commercial Zone; and the Retail Mixed Use or High Density Mixed Use Zone. There may also need to be revisions to establish the areas for neighborhood serving retail and services within residential areas. Some changes to areas that remain industrial may need to be incorporated, in order to accommodate warehouse retail. We will work within the existing structure of the Milpitas Zoning Code so that the code is easy to implement, and at the same time ensure that the provisions necessary to achieve the vision are included.

*Zoning Map*

Dyett & Bhatia will prepare a zoning map graphic to explain all the proposed zoning map amendments, which can serve as the attachment to a rezoning ordinance. City staff will amend the official zoning map after ordinance adoption.

**Design Guidelines**

The existing Midtown Specific Plan contains extensive design guidelines. Dyett & Bhatia and Field Paoli will prepare additional design guidelines for building types not addressed in the Midtown Specific Plan, such as lifestyle retail and high-rise buildings. We recommend that these be included in the Specific Plan, as described above, and not be a stand alone document.

**WORK PROGRAM**

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**TASK 1.0: ANALYSIS OF ENVIRONMENTAL IMPACTS AND DEVELOPMENT ISSUES**

*Objective: Conduct preliminary analysis of major impacts or constraints that could require substantive revisions to the Transit Area Concept Plan. Research development issues and potential solutions related to providing all required infrastructure, and other items necessary for development to proceed such as the BART station area design. Conduct outreach to property owners and stakeholders about the Specific Plan Process. Prepare Settings Sections of the Draft EIR.*

- A. **Kick-Off Meeting.** (Team) Consultant Team will meet with the key staff members to review the overall schedule and major milestones, existing data and maps, and key issues. Existing information and studies needed for the Specific Plan (not already provided for the Concept Plan) will be provided to the consulting team by staff. These include transportation studies and infrastructure and public services studies and master plans. City staff and the team will also review the concept plan and discuss revisions that may be needed.
- B. **Review City staff Comments on Concept Plan, and Interview City Staff as Needed.** (D&B) City staff will circulate the Concept Plan to all relevant City departments, and assemble comments

Exhibit A:  
Scope of Work

from City departments. Consultant will review comments, and meet with City staff as needed to ask questions, gather information, and discuss comments. Planning Department staff will schedule the meetings with City staff on a single day.

- C. **Outreach to Property Owners and Stakeholders.** (D&B) Mail a letter to all property owners and stakeholders updating them on the status of the project. Conduct one day of stakeholder interviews of individuals or groups not interviewed during the Concept Plan Phase.
- D. **Preliminary Traffic Analysis (F&P)** Estimate the amount of traffic generated by the development proposed in the Concept Plan, assess the impacts, and make recommendations for modifications to the Concept Plan to minimize traffic impacts.
- E. **Sewer Treatment Capacity Analysis (IC)** Review City staff estimates of sewer treatment requirements based on development scenarios in the Concept Plan. Discuss with City staff the limitations of the sewer treatment capacity available to the City, and potential modifications to the Concept Plan.
- F. **Economic Analysis (ERA)** Prepare Market Absorption and Demand Analysis, and provide recommendations on how the Concept Plan should be revised to minimize fiscal impacts.
- G. **Existing Conditions Analysis – Land Use, Zoning, Community Design, and Public Services.** (D&B) Analyze the Midtown Specific Plan, the Specific Plan EIR, and other existing city requirements for new development. Prepare settings section of the EIR for Land Use, Population, Visual/Aesthetic and Public Services.
- H. **Existing Conditions Analysis – Transportation.** (F&P) Analyze the Midtown Specific Plan, the Specific Plan EIR, existing transportation studies, and existing city requirements for new development. Prepare the settings section of the EIR for Transportation.
- I. **Existing Conditions Analysis – Streetscape.** (FTB) Analyze the Midtown Specific Plan, existing Streetscape and Trails Master Plans, existing map base, aerial photos, R.O.W. and utilities information, review updated BART & VTA transit facility plans. Make field visit and perform site photography and investigation to serve as basis for design concept recommendations.
- J. **Existing Conditions Analysis – Utilities and Hydrology.** (IC) Analyze the Midtown Specific Plan, the Specific Plan EIR, master plans and studies, and existing city requirements for new development. Prepare the settings section of the EIR.
- K. **Existing Conditions Analysis – Hazardous Materials, Soils and Seismic Hazards, Air Quality, Noise, and Biological Resources (ESA)** Analyze the Midtown Specific Plan, the Specific Plan EIR, existing studies and data bases. Prepare the settings section of the EIR.
- L. **Establish Technical Working Group for BART and Rail Issues and Hold Kick-off Meeting.** (D&B) We recommend that a technical working group be established to resolve issues related to the future BART line and station, and the future of the railroad lines through the area. The group should include representatives from the Public Works Department and VTA. Consultants working for VTA may also be invited if appropriate.
- M. **Analyze BART Proposals and Rail Studies, and Determine Strategy for Resolving Issues.** (D&B F&P, Field, and IC) Team members will analyze BART proposals and rail studies, and prepare recommendations to the City as to how to resolve issues and establish greater certainty that will be needed for future development to move forward.

**Exhibit A:  
Scope of Work**

- Meetings:** *Kick-Off Meeting with Team and Staff*  
*Technical Working Group for BART and Rail Issues (2)*  
*Interviews with Key City Staff*  
*One Day of Stakeholder Interviews*
- Products:** *Market Absorption and Demand Analysis Memo*  
*Summary Memo of Potential Environmental Impacts and Development Issues that could require substantive revisions to the Transit Area Concept Plan.*  
*Administrative Draft Sections of the EIR related to Existing Conditions (Team deadline; not a deliverable to City staff)*

**TASK 2.0: PREFERRED CONCEPT PLAN AND PUBLIC REVIEW**

*Objective: Revise the Concept Plan based on preliminary impact analysis and further research about development issues, and prepare a Preferred Concept Plan. Consult with affected public agencies. Present the preliminary analysis and research, and the Preferred Concept Plan, to the stakeholders, Planning Commission, and City Council.*

- A. **Bus Tour of Transit Station Areas.** (D&B) Take the staff, stakeholders, Planning Commission, and any interested Council members, to visit neighborhoods and districts in nearby cities that are comparable to those proposed for Milpitas. The goal is to see what other cities have done, learn lessons about what has worked well, and see what examples are particularly resonant for Milpitas. Examples could include: Downtown Walnut Creek, Emeryville Lifestyle Retail, Pleasant Hill, Dublin, San Francisco, or San Jose. City to arrange and pay for bus transportation and meal.
- B. **Prepare Test Site Plans for Boulevard Commercial and Mixed Use Areas** to refine density recommendations. (Field) Prepare diagrammatic site plans and building envelopes to test out and recommend revisions to the proposed densities, parking ratios, and development standards, for up to five sites or areas.
- C. **Study Concept Plan Revisions and Prepare a Revised Concept Plan.** (D&B, Field/Paoli, FTB, and Team) Dyett & Bhatia, working with the assistance of Field/Paoli, will study a range of alternative concept plan revisions. These will be reviewed with team members so that all issues and potential impacts are considered.
- D. **Economic Consultants Review of Concept Plan Revisions.** (ERA) ERA will begin the Fiscal Impact Analysis, and evaluate the pros and cons of the potential revisions to the concept plan in terms of fiscal impacts.
- E. **Consult with public agencies.** (D&B, F&P, IC) Dyett & Bhatia will meet with City staff and public agencies such as the Congestion Management Agency, VTA and Union Pacific to discuss the plan and how to resolve development issues.
- F. **Review Concept Plan Revisions with City Staff.** (D&B) Review the concept plan revisions with City staff, and modify as requested prior to public presentation.
- G. **Prepare Notice of Preparation for the Environmental Impact Report.** (D&B) Prepare project description and Notice of Preparation for the EIR.
- H. **Stakeholders Workshop.** (D&B) Present the concept plan revisions to stakeholders, along with the preliminary impact analysis at a workshop, and invite feedback.



**Exhibit A:  
Scope of Work**

- I. **Presentation to Planning Commission.** (D&B) Present the preliminary impact analysis and proposed concept plan revisions, along with the feedback received from stakeholders and public agencies, to the Planning Commission. The Planning Commission meeting will be the formal meeting for the public to submit comments on the scope of the EIR.
- J. **Presentation to City Council.** (D&B) Present the preliminary impact analysis and proposed concept plan revisions, along with the feedback received from stakeholders and public agencies, and the Planning Commission, to the City Council. City Council will give feedback, direction regarding preferred plan modifications, and comments about issues to be studied in the EIR.

**Meetings:** *Concept Plan Alternatives Review with City Staff*  
*Technical Working Group (2)*  
*Stakeholders Workshop*  
*Public Agency Meetings (up to 3 meetings)*  
*Planning Commission Meeting*  
*City Council Meeting*

**Products:** *Preferred Concept Plan*

**TASK 3.0: DRAFT SPECIFIC PLAN AND EIR ANALYSIS**

*Objective: Prepare all the substantive components of the first four chapters of the Specific Plan, review the chapters with City staff, and then compile an Administrative Draft Specific Plan (first four chapters). Conduct EIR analysis, and identify any further revisions to the concept plan that may be warranted. Present the substance of the Specific Plan and environmental impact issues to the Stakeholders at a Stakeholders Workshop.*

- A. **Prepare Detailed Impact Analysis for Draft EIR.** (ESA, F&P, D&B, IC) Prepare the preliminary draft impact and mitigation sections of the Environmental Impact Report.
- B. **Prepare Specific Plan Proposals and review with City Staff – Land Use, Circulation, and Community Design:** (D&B, F&P, FTB, and Field/Paoli) Refine the concept plan if warranted, based on environmental impact analysis and recommended mitigations. Prepare outline of all substantive recommendations, along with preliminary illustrations for Land Use, Circulation, and Community Design Chapter of the Specific Plan. Prepare a sample page of the document format. Review the format, outline and preliminary illustrations with City staff.
  - Land Use Plan – Uses, Density, Height, District Character
  - Urban Design Plan – Streetscape, Pedestrian Bridges, Trails, Parks
  - Circulation Plan: Street System and Pedestrian/Bike Routes
  - Development Pattern – Size, Dimension, and Pattern of Blocks
  - Network of Parks, Trails, and Public Gathering Places
- C. **Prepare Specific Plan Proposals and review with City staff – Policies, Development Standards and Design Guidelines for Each Subarea :** (D&B, FTB, Field) For each sub-area, prepare an outline and preliminary illustrations for policies, development standards, and design guidelines. Review the outline and preliminary illustrations with City staff. Topics to be covered are:
  - Community Character - Building Types, Building Height, and Other Defining Features:

**Exhibit A:  
Scope of Work**

- Streetscape Character and Streetscape Design:
  - Great Mall Parkway – up to 3 segments
  - Montague Expressway – up to 2 segments
  - Montague Expressway – Penitencia Creek pedestrian bridge (elevation only)
  - Montague Expressway – Piper Drive pedestrian bridge (elevation only)
  - Milpitas Blvd Extension – up to 2 segments
  - McCandless Drive – up to 2 segments
  - Piper Drive – 1 segment
  - Falcon Drive – 1 segment
  - Centrepoint to mall connection (Great Mall Pkwy to mall bldg) – 1 segment
  - McCandless to mall connection (Great Mall Pkwy to mall bldg) – 1 segment
  - Planned cross-BART track pedestrian connection (Great Mall to Piper Dr.)
  - Pedestrian crossing – at-grade Great Mall Pkwy-Milpitas Blvd Ext intersection (plan only)
  - Great Mall Pkwy-Montague Expressway intersection – perspective sketch of grade sep
  - Prepare Gateway Intersection Concept Illustrations and Annotations
    - Montague Expressway/Great Mall Parkway - Plan & Section
    - South Main Street/Great Mall Parkway – Plan & Section
  - Prepare Illustrations & annotations of Primary Street Furnishings Types
    - Street light types – arterial/boulevard; avenue; pedestrian scale
    - Tree types – up to 4
- Building Envelopes, and Building Relationship to the street - Illustrations
- Open Space – Size, Types, General Design Parameters
- Parking Location and Design

The architects on our team will prepare illustrative three-dimensional drawings (axonometric or comparable) of up to five key focus areas (one in each sub-area.) Design guidelines will be prepared for building types not already addressed in the Midtown Specific Plan, including high-rise buildings on the major arterials, and life style retail. The streetscape designers will prepare Typical Street Plan Segments and Sections for all types of streets, selected pedestrian linkages, and gateway concepts at selected intersections, showing relationship of buildings to streets and overall public space character.

- D. Stakeholders Workshop. (D&B) Present Specific Plan Proposals and Impact Analysis Information to Stakeholders.
- E. Prepare Administrative Draft Specific Plan – Four Chapters. (Team) Submit the administrative draft of the introduction and background chapters, and the two chapters of the Specific Plan described in (B) and (C) above for staff review and comment.

*Meetings: Two Meetings with City Staff to Review Specific Plan Proposals  
Technical Working Group (2)  
Stakeholders Workshop with Stakeholders*

Exhibit A:  
Scope of Work

*Products: Two Working Memos to Staff, with outline and preliminary illustrations describing Specific Plan Proposals  
Administrative Draft Specific Plan – Four Chapters*

**TASK 4.0: DRAFT EIR**

*Objective: Prepare the Draft EIR for Public Review.*

- A. **Administrative Draft EIR (D&B and Team)** Compile the administrative draft EIR, including all impacts and mitigations sections, as well as other required sections discussing alternatives and cumulative impacts.
- B. **Meetings with Staff to Discuss Mitigations. (D&B and Team)** Meet with City staff to review and discuss proposed mitigations for major impacts, for example transportation, sewer treatment, and flooding. One additional meeting is allowed if required, with City staff and/or an outside agency.

*Meetings: Two Meetings to review Mitigations  
Technical Working Group*

*Products: Administrative Draft EIR*

**TASK 5.0: IMPLEMENTATION PROGRAM AND COMPLETION OF DRAFT SPECIFIC PLAN AND DRAFT EIR**

*Objective: Prepare the Implementation Program components and submit an administrative draft of the implementation program to city staff for review. Revise the implementation program based on staff comments. Prepare the Draft Specific Plan, revising the administrative drafts of the first four chapters and the implementation program in response to staff comments.*

- A. **Prepare Overall Implementation Strategy and Phasing Recommendations (D&B, F&P, ERA, IC).**
- B. **Prepare Summary Description of All Infrastructure Improvements Required for Development of the Area (D&B, F&P, IC)**
  - Streets: New Streets, Street Improvements, Fair Share Traffic Mitigations (D&B, F&P)
  - Streetscape Improvements and Pedestrian Connections (D&B, FTB)
  - Parks (D&B, Field)
  - Railroad Alterations (D&B, IC)
  - Utilities - Water Supply, Water Infrastructure, Recycled Water, Sanitary Sewer Infrastructure and Treatment Capacity, Storm water and Flood Control (IC)
- C. **Prepare Cost Estimates and Recommendations for Financing Mechanisms for Area-wide Infrastructure. (IC, ERA, FTB)**
- D. **Prepare Recommendations for Financing Mechanisms for Public Services. (ERA)**
- E. **Prepare Implementation Work Program. (D&B and Team)** Prepare a matrix of tasks and responsibilities necessary to establish funding mechanisms, provide services, and construct infrastructure.

**Exhibit A:  
Scope of Work**

- F. **Meet with City Staff to Discuss Implementation Program Recommendations.** (D&B)
  - G. **Stakeholders Workshop.** (D&B) Meet with the stakeholders to present and discuss the implementation program recommendations.
  - H. **Submit Administrative Draft Implementation Program for Staff Review.** (D&B)
  - I. **Prepare Draft Specific Plan.** (D&B) Prepare the Draft Specific Plan, revising the administrative drafts of the first four chapters and the implementation program in response to staff comments.
  - J. **Planning Commission Meeting (D&B and Selected Team Members)** Present the Draft Specific Plan to the Planning Commission, and invite comments. This provides an opportunity for the Planning Commission to discuss the Specific Plan, prior to the public hearing on the Draft EIR when they will also be making recommendations to the City Council about the Draft Specific Plan.
  - K. **City Council Meeting.** (D&B and Selected Team Members) Present the Draft Specific Plan to the City Council, and invite comments. This provides an opportunity for the City to discuss the Specific Plan, prior to the public hearing on the Final EIR when they will also be making final decisions about the project.
  - L. **Draft EIR.** (D&B and Team) Prepare the Draft EIR based on staff comments on the Administrative Draft EIR. City staff to distribute for 45 day public review period.
- Meetings: One Meeting with City Staff to review Implementation Program Recommendations*  
*Technical Working Group*  
*Stakeholders Workshop*  
*Planning Commission Meeting to Review Full Draft Specific Plan, including Implementation Program*  
*City Council Meeting to Review Full Draft Specific Plan, including Implementation Program*
- Products: Administrative Draft Implementation Program*  
*Full Draft Specific Plan (including Implementation Program revised to reflect staff comments)*  
*Public Draft EIR*

**TASK 6.0: ZONING AND GENERAL PLAN AMENDMENT**

*Objective: Prepare zoning regulations, zoning map amendments, amendments to the Milpitas Midtown Specific Plan, and General Plan Amendments that implement the Specific Plan.*

- A. **Substantive Issues Memo and Draft Outline.** (D&B) Review the existing zoning code, and analyze the provisions of the Specific Plan that need to be incorporated into zoning. Prepare recommendations for any necessary amendments to the Milpitas Midtown Specific Plan. Prepare a discussion paper to review with staff identifying substantive issues and questions. Prepare a draft outline of the zoning code amendments.
- B. **Administrative Draft of Zoning Code and Midtown Specific Plan Amendments.** (D&B) Based on staff feedback on the substantive issues memo, prepare an administrative draft of the zoning code amendments and any required amendments to the Milpitas Midtown Specific Plan.
- C. **Draft Amendments to the Zoning Code, Zoning Map, Midtown Specific Plan and General Plan Map.** (D&B) Based on staff review of the administrative draft, prepare the public draft of the zoning code and Midtown Specific Plan amendments.

Exhibit A:  
Scope of Work

- D. Stakeholder Meeting. Hold a meeting to present the main provisions of the draft zoning code amendments to the stakeholders; invite comments and answer questions.

*Meetings: Meeting with City Staff to Review Substantive Issues Memo and Draft Zoning Outline  
Stakeholder Meeting*

*Products: Substantive Issues Memo and Draft Outline  
Administrative Draft Zoning Code and Map, Midtown Specific Plan Amendments, and General Plan Map Amendment  
Draft Zoning Code and Map, Midtown Specific Plan Amendments, and General Plan Map Amendment*

**TASK 7.0: PUBLIC REVIEW OF DRAFT SPECIFIC PLAN AND DRAFT EIR**

*Objective: Allow 45 days for public review of the Draft EIR and hold public hearing to receive public comments on the Draft EIR, and final comments on the Draft Specific Plan.*

*Meetings: Planning Commission Public Hearing on Draft Specific Plan, Draft EIR, and Zoning*

*Products: None*

**TASK 8.0: FINAL EIR AND ADOPTION OF SPECIFIC PLAN, EIR, ZONING, AND GENERAL PLAN AMENDMENT**

*Objective: Prepare the Final EIR, with responses to public comments. Based on direction from City staff, and any final amendments required by the response to comments on the EIR, prepare the Final Specific Plan.*

- A. Administrative Draft Final EIR. (D&B and Team) Prepare responses to comments on the Draft EIR. This proposal assumes that no new data collection or technical analysis is required for the response to comments, and that there are no more than 25 comment letters.
- B. Final Specific Plan. (D&B) Revise the Draft Specific Plan in response to written comments from staff. This proposal assumes that response to staff comments involves only editing of text, and does not require major rewriting of content or creation of any new illustrations.
- C. Final EIR. (D&B) Prepare Final EIR in response to staff comments on the administrative Draft Final EIR.
- D. City Council Public Hearing (D&B and Subconsultants if Needed) Present the Final EIR and Final Specific Plan to City Council for adoption. Additional City Council meetings regarding the plan, and/or additional revisions to the Plan in response to further City Council comments, would be an additional task beyond this scope of work.

*Meetings: City Council Meeting*

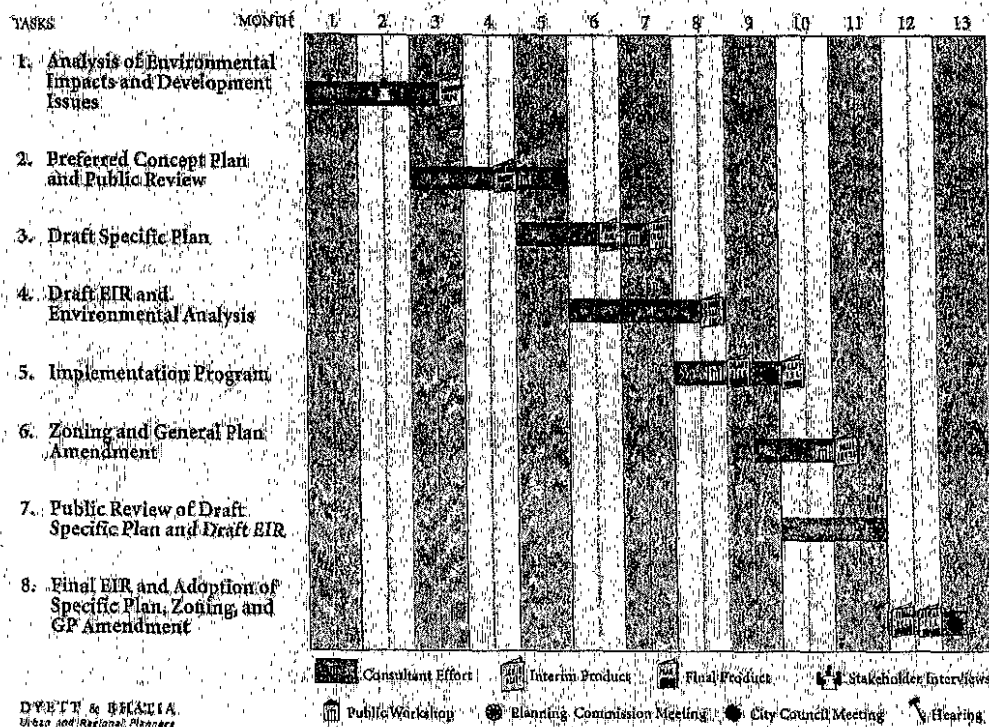
*Products: Administrative Draft Final EIR  
Final Specific Plan  
Final EIR*

## Exhibit A: Scope of Work

### PROJECT SCHEDULE

The schedule on the following page shows 13 months for the total project. An additional two months may be needed, for data collection, resolution of issues with stakeholders, review by decision-makers, and other items. Thus the total time for the project may be up to 15 months.

*Proposed Schedule for the Midtown Transit Subarea Specific Plan*



# EXHIBIT A, Part Two

Exhibit A - Detailed Schedule

Milpitas Transit Area  
Specific Plan

Task	W/O	WK	Tasks for the Week	Responsible	Meetings and Deadlines	Mtg Dates Deadlines
			<b>All items in bold are meetings or products listed in Scope.</b> <i>All items in italics are internal team deadlines-not subject to late penalty.</i> <b>All items in bold with a double asterisk (**)</b> are deliverables subject to late penalty.			
	Aug-17	1	Council Approves Contract Set up Meetings			
1.0 ANALYSIS OF ENVIRONMENTAL IMPACTS AND DEVELOPMENT ISSUES	Aug-22	2	Finalize Contract and Schedule Decide about stakeholder interviews Establish Technical Working Committee Discuss Scope of Work for Infrastructure Review Sewer Capacity Constraints Prepare Data Request List, Review with City <i>Prepare all subcontracts</i> City distributes Concept Plan for review	DB, City DB, City DB, City DB, City PW DB, City PW DB, City DB, Subs City	<b>Kick off Meeting</b> Kick off Meeting Kick off Meeting <b>DB and Public Works Meeting</b> DB and Public Works Meeting City has one week to provide data requested City has one week to get comments back to	Aug-23   Aug-23  Aug-31 Aug-31
	Aug-29	3	Review Market Absorption Potential	DB, ERA	<i>DB and ERA Meeting</i>	
			VTA Meeting: BART Status, Working Together Review Transportation Constraints Invitations to Stakeholder Interviews	DB, City, PW F&P City	<b>VTA Meeting</b> <i>DB and F&amp;P Meeting</i> <b>Prepare and Mail Stakeholder Invites</b>	Aug-31 <i>Aug-31</i> Sept. 8
	Sep-5	4	Preliminary Economic Analysis Preliminary Traffic Analysis Existing Conditions Analysis - Existing Conditions Analysis - Streetscape  Existing Conditions Analysis - Existing Conditions Analysis - Utilities, Bi-Weekly Progress Meeting (Phone)	ERA F&P F&P FTB  ESA IC DB, City	<i>Three Weeks to Complete</i> <i>Three Weeks to Complete</i> <i>Eight Weeks to Complete</i> <i>Eight Weeks to Complete</i>  <i>Eight Weeks to Complete</i> <i>Eight Weeks to Complete</i> <b>Bi-Weekly Progress Meeting (Phone)</b>	      Sept. 8
	Sep-12	5				
	Sep-19	6	Stakeholder Interviews Technical Working Group Meeting Bi-Weekly Progress Meeting (Phone)	DB DB, City DB, City	<b>Stakeholder Interviews</b> <b>Technical Working Group Meeting</b> <b>Bi-Weekly Progress Meeting</b>	Sept-23 Sept. 22 22-Sep
	Sep-26	7	Team Kick-Off Meeting FTB and DB Kick-off Meeting Field and DB Kick-off Meeting	Team DB, FTB DB, Field	<i>Team Kick-Off Meeting</i> <i>FTB and DB Kick-off Meeting</i> <i>Field and DB Kick-off Meeting</i>	
	Oct-3	8	Refine Concept Plan Test Site Plans Base Information Bi-Weekly Progress Meeting (Phone)	DB, Field Field FTB DB, City	<b>Bi-Weekly Progress Meeting</b>	6-Oct

2.0 PREFERRED CONCEPT PLAN AND PUBLIC REVIEW	Oct-10	9	Refine Concept Plan Test Site Plans	DB, Field Field		
	Oct-17	10	Technical Working Group Meeting Design Team Meeting - 1/2 day  Bi-Weekly Progress Meeting (Phone)	DB, Field, FTB DB, City	Technical Working Group Meeting <i>Design Team Meeting</i>  Bi-Weekly Progress Meeting	20-Oct  20-Oct
	Oct-24	11	Prepare Bus Tour Summary Memo - Env. Impacts + Dev. Issues Market Absorption/Demand Memo	D&B, Field DB  ERA	Draft Bus Tour Manual Impacts/Issues Memo to City **  Market Memo to City **	Oct-28  Oct-28
	Oct-31	12	Bus Tour Bi-Weekly Progress Meeting (Phone)	D&B, Field DB, City	Final Bus Tour Manual Bi-Weekly Progress Meeting MTG: Bus Tour	3-Nov Nov-5
	Nov-7	13	Revise Concept Plan  Technical Working Group	DB and Team  DB	Technical Working Group Meeting	10-Nov
	Nov-14	14	Prepare Workshop Presentation Review Concept Plan/Present. with Staff Bi-Weekly Progress Meeting (Phone)	DB, City DB, City	DB and City Staff Meeting Bi-Weekly Progress Meeting	17-Nov 17-Nov
	Nov-21	15	Thanksgiving Week			
	Nov-28	16	Stakeholders Workshop: Revised Concept Plan Bi-Weekly Progress Meeting (Phone)	DB DB, City	Stakeholders Workshop Bi-Weekly Progress Meeting	Dec-1 1-Dec
	Dec-5	17	Meetings with Public Agencies  Notice of Preparation for EIR Technical Working Group Meeting	DB  DB DB	May combine Agency Mtgs w. Tech. Wkg Group  Technical Working Group Meeting	8-Dec  8-Dec
	Dec-12	18	Revise Concept Plan Bi-Weekly Progress Meeting (Phone)	DB DB, City	Bi-Weekly Progress Meeting	15-Dec
	Dec-19	19	Revise Concept Plan			
	Dec-26	20	Christmas Week			
	Jan-2	21	Deliver Preferred Concept Plan to City Materials into Planning Commission Packet Bi-Weekly Progress Meeting (Phone)	DB City DB, City	Preferred Concept Plan **  Bi-Weekly Progress Meeting	Jan. 4 Jan. 6 5-Jan
	Jan-9	22	Planning Comm. Reviews Revised Concept Materials into City Council Packet	City  City	Planning Commission Meeting	Jan. 11  Jan. 10
	Jan 16	23	City Council Reviews Revised Concept Plan Technical Working Group Meeting Bi-Weekly Progress Meeting (Phone)	City  DB DB, City	City Council Meeting  Technical Working Group Meeting Bi-Weekly Progress Meeting	Jan-17  19-Jan 19-Jan



3.0 DRAFT SPECIFIC PLAN / 4.0 DRAFT EIR	Jan-23	24	EIR Analysis - Land Use and Population EIR Analysis - Visual and Shadow EIR Analysis - Transportation EIR Analysis - Hazardous Materials EIR Analysis - Seismic and Soil Hazards EIR Analysis - Air Quality EIR Analysis - Biological EIR Analysis - Public Services EIR Analysis - Hydrology, Flooding, Water EIR Analysis - Public Utilities Prepare Specific Plan Proposals - Design Prepare Specific Plan Proposals - Prepare Specific Plan Proposals - Bldg Prepare Specific Plan Proposals - Infrastr. Prepare Specific Plan Proposals -	DB DB F&P ESA ESA ESA ESA ESA DB IC IC DB FTB Field IC F&P	Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Eight Weeks to Complete Four weeks to Complete Four weeks to Complete Four weeks to Complete Four weeks to Complete Four weeks to Complete	
	Jan-30	25	Bi-Weekly Progress Meeting (Phone)	DB, City	Bi-Weekly Progress Meeting	2-Feb
	Feb-6	26	Technical Working Group Meeting	DB	Technical Working Group Meeting	9-Feb
	Feb-13	27	Bi-Weekly Progress Meeting (Phone)	DB, City	Bi-Weekly Progress Meeting	16-Feb
	Feb. 20	28	Specific Plan Proposals	DB, Team		
	Feb-27	29	Specific Plan Proposals - Task 3B Review Specific Plan Proposals with Staff - Bi-Weekly Progress Meeting (Phone)	DB, Team DB, Field, DB, City	Specific Plan Working Memo #1 to City Meeting with City Staff Bi-Weekly Progress Meeting	28-Feb 2-Mar 2-Mar
	Mar-6	30	Specific Plan Proposals - Task 3C Review Specific Plan Proposals with Staff -	DB, Team DB, FTB	Specific Plan Working Memo #2 to City Meeting with City Staff	7-Mar 9-Mar
	Mar-13	31	Stakeholders Workshop - Plan Proposals Bi-Weekly Progress Meeting (Phone)	DB, City	Stakeholders Workshop Bi-Weekly Progress Meeting	Mar. 17 Mar. 17
	Mar-20	32	Prepare Admin. Draft Specific Plan: Chap 1- Technical Working Group Meeting	DB	Technical Working Group Meeting	23-Mar
	Mar-27	33	Submit Admin. Draft Specific Plan - Chap 1- Subconsultants Submit Env. Analysis Review Admin Draft Specific Plan Chap 1-4 Bi-Weekly Progress Meeting (Phone)	DB Team City DB, City	Admin. Draft Specific Plan Chap 1-4 ** City has three weeks to review Bi-Weekly Progress Meeting	Mar-31 Mar-28 Apr. 21 30-Mar
	Apr-3	34	Compile Admin Draft EIR Prepare Implementation Program Outline of Major Mitigations Meeting with City to Review Mitigations Prepare Financing Recommendations Prepare Cost Estimates for Implementation	DB DB and  DB and ERA FTB, IC	4 Weeks to Complete 4 Weeks to Complete Submit Mitigations Memo to Staff Meeting with City Staff	4-Apr 6-Apr
	Apr-10	35	Bi-Weekly Progress Meeting (Phone)	DB, City	Bi-Weekly Progress Meeting	13-Apr
	Apr-17	36	Technical Working Group Meeting	DB	Technical Working Group Meeting	20-Apr
	Apr-24	37	City Comments - Adm Dft Sp. Plan Chap 1- Submit Admin Draft EIR to City City Reviews Admin Draft EIR Meeting with City Staff RE Implementation Bi-Weekly Progress Meeting (Phone)	City DB City DB, City DB, City	Submit to Dyett and Bhatia Admin Draft EIR to City ** City has two weeks to review Meeting with City Staff Bi-Weekly Progress Meeting	Apr-21 Apr-28 12-May 27-Apr 27-Apr

5.0 IMPLEMENTATION PROGRAM	May-1	38	Revise Specific Plan Chap 1-4 based on staff comments <i>Stakeholder Workshop - Implementation Pg</i>	DB and Team DB	<i>Stakeholders Workshop</i>	May-4
	May-8	39	Implementation Program - Chap. 5 City Submits comments on ADEIR to DB	DB City	Admin Draft Specific Plan - Chap 5 ** City Comments on ADEIR	May-12 May-12
			City reviews Admin Draft SP - Chap 5 <i>Bi-Weekly Progress Meeting (Phone)</i>	City DB, City	City has one week to review <i>Bi-Weekly Progress Meeting</i>	19-May 11-May
	May-15	40	Revise Draft EIR based on staff comments City submits comments on Sp. Plan Chap 5	DB and Team City	<i>Three Weeks to Complete</i>	May-19
	May-22	41	Revise Specific Plan based on staff comments <i>Bi-Weekly Progress Meeting (Phone)</i>	DB DB, City	<i>Two Weeks to Complete</i> <i>Bi-Weekly Progress Meeting</i>	25-May
	May-29	42	DB submits Draft EIR to City Submit Draft Specific Plan to City	DB DB	Draft EIR to City ** Submit Draft Specific Plan to City **	Jun-2 Jun-2
	Jun-5	43	Release Draft EIR and Draft Plan to Public <i>EIR Review Period</i>	City	City has two days to print and distribute - City Expense <i>Forty Five Day Review Period</i>	Jun-6 21-Jul
			Materials into Planning Commission Packet <i>Bi-Weekly Progress Meeting (Phone)</i>	City DB, City	<i>Bi-Weekly Progress Meeting</i>	9-Jun 8-Jun
	Jun-12	44	Plan Comm. Review - Sp. Plan and Impacts Materials into City Council Packet	City	Planning Commission Meeting	14-Jun 13-Jun
	Jun-19	45	City Council Review - Spec. Plan and Impacts <i>Bi-Weekly Progress Meeting (Phone)</i>	DB, City	City Council Meeting <i>Bi-Weekly Progress Meeting</i>	Jun-20 Jun-22
	Jun-26	46	Prepare Zoning, GP and Mid SP Amendments	DB		
	Jul-3	47	<i>Bi-Weekly Progress Meeting (Phone)</i>	DB, City	<i>Bi-Weekly Progress Meeting</i>	6-Jul
6.0 ZONING AND GP AMENDMENT	Jul-10	48	Zoning Issues Memo and Draft Outline Meet with City Staff RE Zoning	DB DB, City	Zoning Issues Memo and Draft Outline to staff Meeting with City Staff	11-Jul 13-Jul
7.0 PUBLIC REVIEW	Jul-17	49	Planning Comm. Public Hearing on DEIR <i>Bi-Weekly Progress Meeting (Phone)</i> End of Public Review Period for the EIR Summarize Plann. Comm. Recommendations	City DB, City City	Planning Comm. Public Hearing - DEIR <i>Bi-Weekly Progress Meeting</i> Public Comments on EIR Due	Jul-19 20-Jul Jul-21 21-Jul
8.0 SPECIFIC PLAN ADOPTION	Jul-24	50	Prepare Final EIR - Response to	DB and	<i>Two weeks, assumes light comments</i>	
	Jul-31	51	Admin Draft Zoning, Map, GP, SP City staff reviews Admin Draft Zoning, etc. <i>Bi-Weekly Progress Meeting (Phone)</i>	DB City DB, City	Submit Ad. Dr. Zoning, Map, GP, SP ** City has one week to review <i>Bi-Weekly Progress Meeting</i>	Jul-31 7-Aug 3-Aug
	Aug-7	52	Submit Admin. Draft Final EIR City staff reviews Admin Final EIR Prepare Revisions to SP, if needed, for CC Revise Zoning based on staff comments	City DB DB	Submit Admin. Draft Final EIR ** City has one week to review	Aug-7 14-Aug
	Aug-14	53	DB Prepares Final EIR based on staff Optional CC meeting in advance of hearing Stakeholder Meeting - Zoning <i>Bi-Weekly Progress Meeting (Phone)</i>	DB City DB DB, City	Not in current scope; might be needed Stakeholder Meeting <i>Bi-Weekly Progress Meeting</i>	17-Aug 17-Aug

8.0 FINAL EIR A	Aug-21	54	DB Delivers Final EIR to City DB Delivers Zoning, GP and Midtown Amen City distributes Final EIR Staff Report for Council Packet, plus docs  Public Comment Period	DB DB City City	<b>Final EIR **</b> <b>Submit Zoning, Map, GP, SP **</b> Two days to print and distribute - City Expense Staff Report with all attachments to Council  Ten day Public Comment Period	Aug-21 Aug-21 Aug-23 Aug. 21  4-Sep
	Aug-28	55	Public Review Period			
	Sep-4	56	City Council Review and Adopt Plan and EIR	City	<b>City Council Hearing</b>	Sep-5
	Sep-11	57	DB Prepares Final Specific Plan for publishing	DB		
	Sep-18	58	DB Submits Final Specific Plan Publish Final Specific Plan	DB City	<b>Final Specific Plan **</b>	Sep-18 Sep-22

## Key:

W/O: week of  
 WK: week  
 MTG: Meeting  
 PC: Planning Commission  
 CC: City Council  
 DB: Dyett & Bhatia  
 City: City of Milpitas Planning  
 City PW: City of Milpitas Public Works  
 ERA: Economics Research Associates  
 ESA: Environmental Science Associates  
 Field: Field Paoli  
 F&P: Fehr & Peers  
 IC: Infrastructure Consultant

OPTION A

Exhibit B:  
Project Budget

## Project Budget

The guaranteed maximum fee for all components is \$672,635. These fees include all personnel costs, subcontractors' costs, and direct costs, and delivery of products identified in the Scope of Work. Subcontractors' costs and direct costs are billed with no administrative markup or handling fee. The tables on the following pages and on the following page provides in detail, estimated Hours by Person by Task; and Budget by Person by Task. Dyett & Bhatia reserves the right to reallocate budgets between firms or tasks provided within the overall contract amount. A 15-percent contingency has been included, to allow for additional tasks to be assigned if the need arises. The contingency may only be used with express direction and written authorization from City staff (e-mail or letter) to Dyett & Bhatia; Dyett & Bhatia will decide which consultant on the team shall perform the additional tasks.

HOURS BY TASK									
	Task 1 Analysis of Environmental Impacts and Development Issues	Task 2 Preferred Concept Plan and Public Review	Task 3 Draft Specific Plan	Task 4 Draft EIR	Task 5 Implementat ion Program	Task 6 Zoning and General Plan Amendmen	Task 7 Public Review of Draft Specific Plan and Draft EIR	Task 8 Final EIR and Adoption of Specific Plan, Zoning, and GP Amendment	TOTAL
<b>Dyett &amp; Bhatia</b>									
Leslie Gould, Project Manager	162	144	142	96	118	58	26	74	820
Rajeev Bhatia, Principal	6	6	8	8	8	8	-	8	52
Michael Dyett, FAICP	-	-	-	-	-	12	-	-	12
Senior Planner II	-	-	-	-	-	164	-	24	188
Planner	170	134	186	150	150	24	44	146	1,004
Graphic Designer	-	-	-	-	104	-	-	44	148
GIS/ Computer Graphics	34	84	124	44	84	44	-	44	458
Support	30	30	64	104	86	44	24	84	466
Sub-Total	402	398	524	402	550	354	94	424	3,148
<b>Field Paoli Architects</b>									
Frank Fuller, FAIA	10	18	14	-	4	4	4	-	54
Sameer Chadha	10	60	72	-	40	-	-	-	182
Tanu Sankala	-	22	24	-	20	-	-	-	66
Sub-Total	20	100	110	0	64	4	4	0	302
<b>Freedman Tung &amp; Bottomley</b>									
Principal	17	10	76	-	35	-	-	6	144
Associate	31	2	173	-	41	-	-	24	271
Autocad Operator II	18	4	169	-	24	-	-	-	215
Project Assistant I	23	7	133	-	38	-	-	11	213
Sub-Total	89	23	551	0	138	0	0	41	843
<b>Economics Research Associates</b>									
Bill Lee	60	16	8	-	16	-	8	-	108
Associate	28	-	-	-	16	-	-	-	44
Sub-Total	88	16	8	0	32	0	8	0	152
<b>Feltz &amp; Peers Associates</b>									
Sohrab Rashid, P.E.	14	2	8	12	4	-	4	8	52
Julie Morgan	28	-	2	73	-	-	2	2	107
Jason Nasdahi	76	4	24	162	16	-	8	14	304
Support/Graphics	16	2	4	42	-	-	2	4	70
Sub-Total	134	8	38	289	20	0	16	28	533
<b>Environmental Science Associates</b>									
Marty Abell, AICP	1	-	-	1	-	-	-	1	3
Deborah Kirtman, AICP	10	-	8	7	2	-	4	6	37
Peter Hudson, P.G. (Seismicity and Haz Mat)	40	-	24	16	3	-	-	5	88
Thomas Roberts, CWB (Bio Resources)	15	-	4	6	6	-	-	5	36
Paul Miller (Air Quality and Noise)	4	-	2	2	1	-	-	1	10
Geraldina Grunbaum (Air Quality and Noise)	40	-	16	18	8	-	-	6	88
GIS	6	-	4	2	2	-	-	2	16
Admin	6	-	2	2	1	-	-	2	13
Sub-Total	122	0	60	54	23	0	4	28	291
<b>TOTAL HOURS</b>	<b>855</b>	<b>545</b>	<b>1,291</b>	<b>745</b>	<b>827</b>	<b>358</b>	<b>126</b>	<b>521</b>	<b>5,269</b>

**Exhibit B:  
Project Budget**

<b>BUDGET BY TASK</b>										
	Hourly Rate	Task 1 Analysis of Environmental Impacts and Development Issues	Task 2 Preferred Concept Plan and Public Review	Task 3 Draft Specific Plan	Task 4 Draft EIR	Task 5 Implementation Program	Task 6 Zoning and General Plan Amendments	Task 7 Public Review of Draft Specific Plan and Draft EIR	Task 8 Final EIR and Adoption of Specific Plan, Zoning, and GP Amendment	TOTAL
<b>Dyett &amp; Bhatia</b>										
Leslie Gould, Project Manager	\$135	\$21,870	\$19,440	\$19,170	\$12,960	\$15,930	\$7,830	\$3,510	\$9,990	\$110,700
Rajeev Bhatia, Principal	150	900	900	1,200	1,200	1,200	1,200	-	1,200	\$7,800
Michael Dyett, FAICP	150	-	-	-	-	-	1,800	-	-	\$1,800
Senior Planner II	90	-	-	-	-	-	14,760	-	2,160	\$16,920
Planner	80	13,600	10,720	14,880	12,000	12,000	1,920	3,520	11,680	\$80,320
Graphic Designer	80	-	-	-	-	8,320	-	-	3,520	\$11,840
GIS/ Computer Graphics	75	2,550	6,300	9,300	3,300	6,300	3,300	-	3,300	\$34,350
Support	50	1,500	1,500	3,200	5,200	4,300	2,200	1,200	4,200	\$23,300
Direct Costs		\$300	\$600	\$350	\$500	\$520	\$240	\$200	\$500	\$3,210
Sub-total		\$40,720	\$39,460	\$48,100	\$35,160	\$40,570	\$33,250	\$8,430	\$36,550	\$290,240
<b>Field Paoli Architects</b>										
Frank Fuller, FAIA	\$195	\$1,950	\$3,510	\$2,730	\$-	\$780	\$780	\$780	\$-	\$10,530
Sameer Chadha	121	1,213	7,276	8,731	-	4,851	-	-	-	\$22,071
Tanu Sankalla	101	-	2,222	2,424	-	2,020	-	-	-	\$6,666
Direct Costs		\$80	\$200	\$500	\$-	\$40	\$40	\$40	\$-	\$900
Sub-total		\$3,243	\$13,208	\$14,385	\$-	\$7,691	\$820	\$820	\$-	\$40,167
<b>Freedman Tung &amp; Bottomley</b>										
Principal	\$200	\$3,400	\$2,000	\$15,200	\$-	\$7,000	\$-	\$-	\$1,200	\$28,800
Associate	100	3,100	200	17,300	-	4,100	-	-	2,400	\$27,100
Autocad Operator II	70	1,260	280	11,830	-	1,680	-	-	-	\$15,050
Project Assistant I	50	1,165	372	6,650	-	1,917	-	-	540	\$10,644
Direct Costs		\$803	\$257	\$4,588	\$-	\$4,823	\$-	\$-	\$208	\$10,679
Sub-total		\$9,728	\$3,109	\$55,568	\$-	\$19,520	\$-	\$-	\$4,348	\$92,273
<b>Economics Research Associates</b>										
Bill Lee	\$225	\$13,500	\$3,600	\$1,800	\$-	\$3,600	\$-	\$1,800	\$-	\$24,300
Associate	130	3,640	-	-	-	2,080	-	-	-	\$5,720
Sub-total		\$17,140	\$3,600	\$1,800	\$-	\$5,680	\$-	\$1,800	\$-	\$30,020
<b>Fehr &amp; Peers Associates</b>										
Sohrab Rashid, P.E.	\$185	\$2,590	\$370	\$1,480	\$2,220	\$740	\$-	\$740	\$1,480	\$9,620
Julie Morgan	150	4,200	\$-	300	10,950	-	-	300	300	\$16,050
Jason Nasdahl	120	9,120	480	2,880	19,440	1,920	-	960	1,680	\$36,480
Support/Graphics	85	1,360	170	340	3,570	-	-	170	340	\$5,950
Direct Costs		\$850	\$150	\$200	\$1,460	\$150	\$-	\$250	\$350	\$3,410
Sub-total		\$18,120	\$1,170	\$5,200	\$37,640	\$2,810	\$-	\$2,420	\$4,150	\$71,510
<b>Environmental Science Associates</b>										
Marty Abell, AICP	\$175	\$175	\$-	\$-	\$175	\$-	\$-	\$-	\$175	\$525
Deborah Kirtman, AICP	150	1,500	-	1,200	1,050	300	-	600	900	\$5,550
Peter Hudson, P.G. (Seismicity and Haz Mat)	150	6,000	-	3,600	2,400	450	-	-	750	\$13,200
Thomas Roberts, CWB (Bio Resources)	165	2,475	-	660	990	990	-	-	825	\$5,940
Paul Miller (Air Quality and Noise)	155	620	-	310	310	155	-	-	155	\$1,550
Geraldina Grunbaum (Air Quality and Noise)	120	4,800	-	1,920	2,160	960	-	-	720	\$10,560
GIS	95	570	-	380	190	190	-	-	190	\$1,520
Admin	65	390	-	130	130	65	-	-	130	\$845
Direct Costs		\$500	\$-	\$100	\$150	\$50	\$-	\$100	100	\$1,000
Sub-total		\$17,030	\$-	\$8,300	\$7,555	\$3,160	\$-	\$700	\$3,945	\$40,690
<b>Infrastructure Consultant</b>										\$20,000
<b>TOTAL without contingency</b>		\$105,981	\$60,547	\$133,353	\$80,355	\$87,431	\$34,070	\$14,170	\$48,993	\$584,900
<b>Contingency (15% of total)</b>										\$87,735
<b>TOTAL with Contingency</b>										\$672,635
Note: Dyett & Bhatia billing rates are subject to annual adjustment. Billing rate changes, however, shall have no impact on overall task or project costs/budget.										

# OPTION B

## Budget

We are willing to complete the proposed Transit Subarea Specific Plan and EIR for a fee \$475,000. We have allocated \$20,000 for infrastructure analysis to be performed by an engineering firm selected in consultation with the Public Works Department. These fees include all personnel costs, subcontractors' costs, and direct costs, and delivery of products identified in the Scope of Work. Subcontractors' costs and direct costs are billed with no administrative markup or handling fee. Costs for printing and distributing copies of documents is the responsibility of the City. The table below and on the following page explains the proposed budget in detail: Hours by Person by Task; and Budget by Person by Task.

### HOURS BY TASK

	Task 1 Analysis of Environmental Impacts and Development Issues	Task 2 Preliminary Concept Plan and Public Review	Task 3 Draft Specific Plan	Task 4 Draft EIR	Task 5 Implementation Program	Task 6 Zoning and General Plan Amendment	Task 7 Public Review of Draft Specific Plan and Draft EIR	Task 8 Final EIR and Adoption of Specific Plan, Zoning, and GP Amendment	TOTAL
<b>Dyett &amp; Bhatia</b>									
Leslie Gould, Project Manager	142	126	122	74	98	58	26	74	7
Rajeev Bhatia, Principal	6	6	8	8	8	8	-	0	-
Michael Dyett, FAICP	-	-	-	-	-	12	-	-	-
Senior Planner II	-	-	-	-	-	164	-	24	1
Planner	168	132	184	148	148	24	14	146	5
Graphic Designer	-	-	-	-	104	-	-	44	-
GIS/ Computer Graphics	34	84	124	44	84	44	-	44	-
Support	28	28	64	104	84	44	24	84	-
Sub-Total	378	376	502	378	526	354	94	424	13
<b>Field Paoli Architects</b>									
Frank Fuller, FAIA	10	18	14	-	4	4	4	-	-
Sameer Chadda	10	60	72	-	40	-	-	-	-
Tantu Sankalla	-	22	24	-	20	-	-	-	-
Sub-Total	20	100	110	0	64	4	4	0	0
<b>Economics Research Associates</b>									
BH Lee	60	16	8	-	16	-	8	-	-
Associate	28	-	-	-	16	-	-	-	-
Sub-Total	88	16	8	0	32	0	8	0	0
<b>Pehr &amp; Peers Associates</b>									
Sohrab Rashid, P.E.	14	2	8	8	4	-	4	8	-
Jill Morgan	28	-	2	58	-	-	2	2	-
Jason Nasdahl	76	4	24	162	16	-	8	14	-
Support/Graphics	16	2	4	42	-	-	2	4	-
Sub-Total	134	8	38	270	20	0	16	28	-
<b>Environmental Science Associates</b>									
Marty Abell, AICP	1	-	-	1	-	-	-	1	-
Dorothy Korman, AICP	10	-	8	7	2	-	-	6	-
Peter Hudson, P.G. (Seismicity and Haz Mat)	40	-	24	16	3	-	-	5	-
Thomas Roberts, CWB (Bio Resources)	13	-	4	6	6	-	-	5	-
Paul Miller (Air Quality and Noise)	4	-	2	2	1	-	-	1	-
Geraldine Grunbaum (Air Quality and Noise)	40	-	16	18	8	-	-	6	-
GIS	6	-	4	2	2	-	-	2	-
Admin	6	-	2	2	1	-	-	2	-
Sub-Total	122	0	60	54	22	0	4	28	-
<b>TOTAL HOURS</b>	<b>742</b>	<b>500</b>	<b>718</b>	<b>702</b>	<b>665</b>	<b>358</b>	<b>126</b>	<b>490</b>	

BUDGET BY TASK									
Hourly Rate	Task 1 Analysis of Environmental Impacts and Development Issues	Task 2 Preferred Concept Plan and Public Review	Task 3 Draft Specific Plan	Task 4 Draft EIR	Task 5 Implementation on Program	Task 6 Zoning and General Plan Amendment	Task 7 Public Review of Draft Specific Plan and Draft EIR	Task 8 Final EIR and Adoption of Specific Plan, Zoning, and CP Amendment	TOTAL
<b>Dyett &amp; Bhatia</b>									
Leslie Gould, Project Manager	\$135	\$19,170	\$17,010	\$9,990	\$13,230	\$7,830	\$3,510	\$9,990	\$97,200
Rajeev Bhatia, Principal	150	900	900	1,200	1,200	1,200	-	1,200	\$7,800
Michael Dyett, FAICP	150	-	-	-	-	1,800	-	-	\$1,800
Senior Planner II	90	-	-	-	-	14,760	-	2,160	\$16,920
Planner	80	13,440	10,560	11,840	11,840	1,920	3,520	11,680	\$79,520
Graphic Designer	80	-	-	-	8,320	-	-	3,520	\$11,840
GIS/Computer Graphics	75	2,250	6,300	3,300	6,300	3,300	-	4,200	\$34,350
Support	50	1,400	1,400	3,200	4,200	2,200	1,200	-	\$23,000
Direct Costs		\$300	\$600	\$350	\$493	\$240	\$200	\$500	\$3,183
Sub-total		\$37,760	\$36,770	\$45,240	\$32,030	\$45,583	\$8,430	\$36,550	\$275,613
<b>Field Paoli Architects</b>									
Frank Fuller, FAIA	\$195	\$1,950	\$3,510	\$2,730	\$780	\$780	\$780	-	\$10,530
Sameer Chadha	121	1,213	7,276	8,731	4,851	-	-	-	\$22,071
Tano Santhia	101	-	2,272	2,424	2,020	-	-	-	\$6,666
Direct Costs		\$80	\$200	\$500	\$40	\$40	\$40	-	\$900
Sub-total		\$3,243	\$13,208	\$14,385	\$7,691	\$820	\$820	-	\$40,167
<b>Economics Research Associates</b>									
Bill Lee	\$225	\$13,500	\$3,600	\$1,800	\$3,600	-	\$1,800	-	\$24,300
Associate	130	3,640	-	-	2,080	-	-	-	\$5,720
Direct Costs		\$-	\$-	\$-	\$-	\$-	\$-	\$-	\$-
Sub-total		\$17,140	\$3,600	\$1,800	\$5,680	\$-	\$1,800	\$-	\$30,020
<b>Fehr &amp; Peers Associates</b>									
Sohrab Rashid, P.E.	\$185	\$2,590	\$370	\$1,480	\$740	\$-	\$740	\$1,480	\$8,880
Julie Morgan	150	4,200	-	300	8,700	-	300	300	\$13,800
Jacora Nerdahl	120	9,120	480	2,880	1,920	-	960	1,680	\$36,480
Support/Graphics	85	1,360	170	340	3370	-	170	340	\$5,950
Direct Costs		\$850	\$150	\$200	\$150	\$-	\$250	\$350	\$3,400
Sub-total		\$18,120	\$1,170	\$5,200	\$2,810	\$-	\$2,420	\$4,150	\$68,510
<b>Environmental Science Associates</b>									
Mary Abell, AICP	\$175	\$175	\$-	\$175	\$-	\$-	\$-	\$175	\$525
Daborah Kirtman, AICP	150	1,500	-	1,050	300	-	600	900	\$5,550
Peter Hudson, P.G. (Seismicity and Haz Mat)	150	6,000	-	3,600	450	-	-	750	\$13,200
Thomas Roberts, CMB (Bio Resources)	165	2,475	-	660	990	-	-	825	\$5,940
Paul Miller (Air Quality and Noise)	155	620	-	310	155	-	-	155	\$1,550
Geraldina Grunbaum (Air Quality and Noise)	120	4,800	-	1,920	960	-	-	720	\$10,560
GIS	95	\$70	-	360	190	-	-	190	\$1,520
Admin	65	360	-	130	65	-	-	130	\$845
Direct Costs		\$300	\$-	\$100	\$50	\$-	\$100	\$3,945	\$1,000
Sub-total		\$17,030	\$-	\$7,555	\$3,160	\$-	\$700	\$3,945	\$40,690
<b>Infrastructure Consultant</b>									
TOTAL		\$93,293	\$54,748	\$74,925	\$64,924	\$34,070	\$14,170	\$44,645	\$475,000

... is subject to annual adjustment. Billing rate changes, however, shall have no impact on overall task or project costs/budget.